IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.4311 OF 1998

Life Insurance Corporation of India ...Plaintiff

Versus

Smt.Swati Dwarkanath Salunkhe ...Defendant

Shri Prakash Mulky i/by M/s.G.C.Poojary & Co for the Plaintiff.

CORAM : ABHAY S.OKA, J.
DATED : JULY 11, 2007.

P.C.:

1. Heard learned counsel appearing for the Plaintiff. The Defendant has not filed written statement and hence the suit is kept under the caption of "Undefended Suits for Exparte Decree". The suit is filed for recovery of sum of Rs.34,162/- paid by the Plaintiff to the Defendant under a policy known as "Bima Sandesh Policy without Profits". The policy was held by the deceased husband of the Respondent. On demise of the deceased husband, the aforesaid amount being the amount payable under the policy was paid to the Defendant. Later on during the course of the audit, the Plaintiffs realised that the assured had not paid premium due on 13th February, 1994 till the date of his death. According to the case of the Plaintiffs, under the terms of "Bima Sandesh Policy without Profits Scheme" the policy lapsed on account of non payment of

the premium due and payable on 13th February, 1994. Therefore, by sending a letter and a legal notice the Defendant was called upon to repay the amount which was wrongly paid to her.

2. The allegations made in the plaint are not controverted. In view of non payment of the premium, the policy had lapsed. Therefore, the Plaintiff is entitled to claim the refund of the amount which was erroneously paid to the Defendant.

3. However, interest cannot be granted at the rate of 18 per cent per annum and the interest will have to be fixed at the rate of 6 per cent per annum. It must be noted here that there is no clause in the policy which provides for stipulation regarding rate of interest and there is no contract in existence regarding the rate at which interest will payable by the Defendant.

4. Hence, there will be a decree in terms of prayer clause (a) and (b) subject to modification that interest payable on sum of Rs.34,162/- from 20th August, 1998 will be at the rate of 6 per cent per annum till the payment or realisation. Certified copy is expedited.

JUDGE